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IN THE

Supreme Court of the United States

October Term, 1941.

No. 1188

THE UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, Executor of the Estate of CAROLINE G. CAUGHEY, *Petitioner,*

v.

GUY T. HELVERING, Commissioner of Internal Revenue, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA Executor, Estate of CAROLINE G. CAUGHEY, *Petitioner,*

By GEORGE E. HAMILTON,
GEORGE E. HAMILTON, JR.,
CHARLES D. HAYES,
LEO N. McGUIRE,
Counsel for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Union Trust Company of the District of Columbia, Executor of the Estate of Caroline G. Caughey, respectfully prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fourth Circuit, entered in the above entitled cause on January 29, 1942 (R. 21), which reversed the decision of the Board of Tax Appeals.

SUMMARY STATEMENT.

The petitioner filed a petition in the United States Board of Tax Appeals for a re-determination of a deficiency in estate tax asserted by respondent, in the sum of $39,390.05. (R. 21).

Petitioner, incorporated under the laws of the United States for the District of Columbia, is Executor and Trustee under the Will of Caroline G. Caughey, who died domiciled in the District of Columbia on July 24, 1936 (R. 1).

Decedent, after making certain bequests and directions, not here involved, devised and bequeathed the residue of her estate to the petitioner, as trustee. The petitioner was directed to convey decedent's country home, called Rockwood Manor, to the National Girl Scouts, Inc., to be utilized by them as a character building center, provided that the conveyance should be subject to the condition that in the event the Girl Scouts abandoned the property or did not use it as a means of character building or help to the cause, it should go to the Esther Chapter of the Eastern Star for their good work and use (R. 15, 17).

Decedent directed the payment of the net income monthly to her husband, John Wilson Caughey, and gave him the exclusive use of her home at 3045 N Street N. W., Washington, D. C., and the furnishings therein, and directed the petitioner, should illness, accident or misfortune require more than the net income monthly for his proper care and support, to contribute from the corpus of the trust such additional sum or sums as to sufficiently and properly care for him in his time of need (R. 16).

Decedent further directed that upon the death or remarriage of the husband all real estate and furnishings were to be sold and one-half of the proceeds thereof, together with one-half of the trust estate, should be paid over to the National Girl Scouts, Inc. if they were still operating Rockwood Manor, to be used in developing and improving the property, not in salaries to officers, and if they had abandoned the property or were not using it for character building purposes said amount should be paid over to the Esther Chapter of the Eastern Star (R. 17).

Decedent further provided that the remaining one-half of the trust estate should be held by petitioner for a period of twenty years after the death of the husband, and at that time the same should be paid over to the National Girl

Scouts, Inc. if then in possession of Rockwood Manor, and, if not, then to the Esther Chapter of the Eastern Star (R. 18).

At the time of decedent's death John Wilson Caughey was seventy-six years old and had a life expectancy, according to the Table of Mortality, of 6.11 years. He was in good health and at the time of the proceedings in the Board of Tax Appeals had lived at the house on N Street continuously since his wife's death. His yearly expenses for the four years after his wife's death amounted to approximately $4,000.00. (R. 3).

The gross estate of the decedent amounted to $364,506.29 (R. 4). The residuary estate was valued at more than $310,000.00 (R. 24). From the date of decedent's death to December 1st, 1939, the net income distributable to the said John Wilson Caughey, after the payment of all charges, including taxes, repairs and all expenses of the N Street home, compensation to the Trustee, and yearly payments other than to the husband, as provided in the Will, was as follows:

1936 (five months)	$ 4,463.99
1937	$ 9,056.19
1938	$ 8,077.90
1939	$10,513.54

(R. 4).

Pursuant to the provision of the Will petitioner duly conveyed Rockwood Manor to the National Girl Scouts, Inc. by Deed dated January 21st, 1938, and it has been occupied by that organization continually since that time (R. 4). In the Estate Tax return Rockwood Manor was valued at $38,375.00 (R. 5).

The National Girl Scouts, Inc. is a domestic corporation organized and operated exclusively for one or more of the purposes enumerated in Section 303 (a) (3) of the Revenue Act of 1926 as amended (R. 4).

The Esther Chapter of the Eastern Star is not such an organization but is a constituent chapter of the Grand Chapter of the Order of the Eastern Star of the District of Columbia (R. 4).

Respondent, in his determination of the deficiency, allowed the deduction of the gift to the Girl Scouts of Rockwood Manor as a charitable gift under the Statute, but disallowed as a deduction the value of the net residuary estate (R. 5). The Board of Tax Appeals overruled the respondent as to the value of the net residuary estate (R. 11). The Circuit Court of Appeals reversed the Board of Tax Appeals and disallowed the value of the same as a charitable deduction (R. 27).

QUESTION PRESENTED.

Is the value of the remainder estate bequeathed to the National Girl Scouts, Inc., after deducting expenses and the value of the life estate to the husband, deductible as a charitable bequest under the Statute?

REASONS FOR ALLOWANCE OF WRIT

1. The case raises an important question of Federal law involving estate tax and the deductibility of charitable bequests under that law.

2. The decision of the Circuit Court of Appeals is in conflict with the principle laid down by this Court in *Ithaca Trust Company* v. *United States*, 279 U. S. 151, in that it sets a higher standard of certainty than the standard set by this Court in determining the deductibility of charitable bequests.

Wherefore, petitioner prays that a writ of certiorari be issued to review the judgment of the Circuit Court of Appeals for the Fourth Circuit.

UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, Executor, Estate of CAROLINE G. CAUGHEY, *Petitioner*,

By GEORGE E. HAMILTON,
GEORGE E. HAMILTON, JR.,
CHARLES D. HAYES,
LEO N. MCGUIRE,
Counsel for Petitioner.

IN THE

Supreme Court of the United States

October Term, 1941.

No. —

THE UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA,
Executor of the Estate of CAROLINE G. CAUGHEY,
Petitioner,

v.

GUY T. HELVERING, Commissioner of Internal Revenue,
Respondent.

BRIEF IN SUPPORT OF PETITION

OPINION BELOW.

The opinion of the United States Circuit Court of Appeals for the Fourth Circuit was handed down on January 29th, 1942 (R. 21). This opinion reversed the decision of the United States Board of Tax Appeals, reported in 44 B. T. A. 385.

JURISDICTION

The judgment of the United States Circuit Court of Appeals for the Fourth Circuit sought to be reviewed was entered on January 29, 1942 (R. 27). The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended (28 U. S. C. 347, 43 Stat. 938).

STATUTES INVOLVED

Revenue Act of 1926, c. 27, 44 Stat. 9:

Sec. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—

* * * * *

(3) The amount of all bequests, legacies, devises, or transfers, * * * to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, * * * or to a trustee or trustees, or a fraternal society order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, * * *. (U. S. C., Title 26, Sec. 412).

STATEMENT.

The facts are as set forth in the petition supra, pp. 1 to 4.

SPECIFICATION OF ERRORS

It is submitted that the United States Court of Appeals for the Fourth Circuit erred in the following particulars:

1. In holding that the remainder estate bequeathed to the National Girl Scouts, Inc. is not deductible as a charitable bequest.

2. In holding that the conditions involved rendered the value of the bequest unascertainable at the date of death.

ARGUMENT.

The conditions imposed upon the gift of the remainder do not render that gift problematical or its value unascertainable.

The opinion of the Lower Court is based on the premise that the bequest to the National Girl Scouts, Inc. is indefi-

nite and uncertain because of the following conditions imposed by the testatrix in her will:

1. The limited right of the Trustee to invade the principal for the benefit of the husband.

2. That upon the death or remarriage of the husband, and twenty years thereafter, the Girl Scouts are to receive the remainder estate provided that at each of such times they are still operating Rockwood Manor.

As to the first condition, the Lower Court stated that if that condition "was the only source of uncertainty in the pending case, we should hesitate to hold that the bequests of the residue are not deductible for estate tax purposes." There is ample justification for the Court's comment regarding this condition. In the decision of this Court in *Ithaca Trust Company* v. *United States*, 279 U. S. 151-154, the decedent gave the residue of his estate to his wife for life, and authorized the use from the principal of any sum "that may be necessary to suitably maintain her in as much comfort as she now enjoys." This Court held that that provision did not make the gifts of the remainder to charity so uncertain that the deduction of those gifts from the gross estate could not be allowed. In the instant case the provisions of decedent's will in this respect are considerably more restricted in that the invasion of principal is limited strictly to cases of illness, accident, or death requiring more than the net monthly payments for the proper care and comfort of the husband, and then only such additional sum as would be sufficient properly to care for the husband during his time of need. Further, the facts developed are that the husband has the use of the house, rent free, for his life; that his yearly expenses do not exceed $4,000.00; and that the yearly income payable to him exceeded the rate of $8,000.00 in each of the four years following decedent's death. Proper application of the decision of this Court in *Ithaca Trust Company, supra*, would not permit a decision that the condition imposed by the testatrix respecting invasion of principal for the benefit of her husband made the

bequests to the Girl Scouts so uncertain as to result in the disallowance of the deduction for charitable bequests. The Lower Court has cited the decision in *Gammons* v. *Hassett*, 1 Cir., 121 Fed. 2d 229. That case is not applicable here as the provision of the will there involved permitted the invasion of the principal to the extent "my said wife may at any time or from time to time need or desire." Such an authorization goes far beyond the restricted provision in the wills of the testatrix in this case and the testator in the case of *Ithaca Trust Company* v. *United States, supra.* To the extent that the Lower Court relied upon the first condition in support of its decision it has either failed to accept or misapplied the rule laid down in *Ithaca Trust Company* v. *United States, supra.*

The Lower Court, in its opinion, dwells upon the second condition and speculates at length upon the possibility or probability of the Girl Scouts continuing in possession of Rockwood Manor after the death or remarriage of the testatrix' husband and twenty years thereafter and upon this speculation it bases its conclusion that sufficient uncertainty surrounds the bequest to defeat its deductibility.

In *Ithaca Trust Company* v. *United States, supra,* this Court stated:

> "After the death of the wife there were bequests in trust for admitted charities. The case presents two questions the first of which is whether the provisions for the maintenance of the wife made the gifts to charity so uncertain that the deduction of the amount of those gifts from the gross estate under pp. 403 (a) (3), supra, in order to ascertain the estate tax, cannot be allowed. *Humes* v. *United States*, 276 U. S. 487, 494. This we are of opinion must be answered in the negative. The principal that could be used was only so much as might be necessary to continue the comfort then enjoyed. The standard was fixed in fact and capable of being stated in definite terms of money. It was not left to the widow's discretion. The income of the estate at the death of the testator, and even after debts and specific legacies had been paid, was more

> than sufficient to maintain the widow as required. There was no uncertainty appreciably greater than the general uncertainty that attends human affairs."

Applying the language "no uncertainty appreciably greater than the general uncertainty that attends human affairs" to the facts of this case it becomes apparent that there is nothing in the record nor in the opinion of the Lower Court that justifies its conclusion.

Decedent made a devise, to take effect immediately upon her death, of her country estate known as "Rockwood Manor." She attached to this devise the same conditions which are attached to the gifts of the remainder to take effect upon the death or remarriage of her husband and twenty years thereafter, yet there has never been any question as to the deductibility of this devise. Respondent has conceded it to be within the provisions of Section 303 of the Revenue Act of 1926, even though the title in the Girl Scouts would be divested in the event that they should abandon the property or fail to use it as a means of character building. The only distinction between the devise and the bequests of the remainder is that the possession of the devise is immediate and the possession of the remainder is postponed for a few years as to one-half and twenty years thereafter as to the balance. Failure to enjoy actual possession of the remainder could occur only as a result of the Girl Scouts taking the positive action of abandoning the property or ceasing to use it for character building purposes—which would amount to their refusal to accept a bequest of more than $300,000.00—or by the National Girl Scouts, Inc., ceasing to exist.

As was pointed out by the Board of Tax Appeals in its decision, the transfer of the remainder

> "* * * was to take place, certainly, upon the death or remarriage of John Wilson Caughey as to the first half, and 20 years from that date as to the second half, provided only that the Girl Scouts should not have abandoned Rockwood Manor, but should have continued to operate it for character building purposes. We shall

> assume that the respondent does not regard the possibility of the use of the property by the Girl Scouts for purposes other than 'character building' as a serious contingency. Actually, then, the Girl Scouts have only to remain in possession and operation of Rockwood Manor in order to qualify for the entire residue of the estate, after termination of the intermediate estates. Their duty is a passive and not an active one."

Under the facts and circumstances of this case, the only way in which the estate of the Girl Scouts in the remainder can reasonably be defeated is by the organization ceasing to exist. The decision of the Lower Court, therefore, is tantamount to saying that it must be assumed that it is unlikely the Girl Scouts will be in existence upon the death or remarriage of the husband, whose life expectancy at the time of testatrix' death was slightly more than six years, and twenty years thereafter. Such an assumption violates the rule enunciated by this Court in the case of *Ithaca Trust Company* v. *United States, supra,* in that it holds the uncertainty as to the future existence of the Girl Scouts to be "appreciably greater than the general uncertainty that attends human affairs."

For the reasons set forth, the Lower Court erred in reversing the decision of the Board of Tax Appeals, and it is respectfully submitted that the writ of certiorari should be issued as prayed.

UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, Executor, Estate of CAROLINE G. CAUGHEY, *Petitioner,*

By GEORGE E. HAMILTON,
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CITATIONS

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460686—42

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 1188

THE UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, EXECUTOR OF THE ESTATE OF CAROLYN G. CAUGHEY, DECEASED, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Board of Tax Appeals (R. 5–13) is reported in 44 B. T. A. 385. The opinion of the Circuit Court of Appeals for the Fourth Circuit (R. 21–27) is reported in 125 F. (2d) 401.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered January 29, 1942. (R. 27.) The pe-

tition for a writ of certiorari was filed April 28, 1942. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether there was a definite and unconditional bequest of the residuary estate to a charitable organization within the meaning of Section 303 (a) (3) of the Revenue Act of 1926.

STATUTE AND REGULATIONS INVOLVED

Revenue Act of 1926, c. 27, 44 Stat. 9:

> SEC. 303. For the purpose of the tax the value of the net estate shall be determined—
>
> (a) In the case of a resident, by deducting from the value of the gross estate—
>
> * * * * *
>
> (3) The amount of all bequests, legacies, devises, or transfers, * * * to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, * * *.

Treasury Regulations 80 (1934 Ed.):

> ART. 47. *Conditional bequests.*—If the transfer is dependent upon the performance of some act or the happening of some event in order to become effective, it is necessary that the performance of the act or the occurrence of the event shall have taken place before the deduction can be allowed.

If the legatee, devisee, donee, or trustee is empowered to divert the property or fund, in whole or in part, to a use or purpose which would have rendered it, to the extent that it is subject to such power, not deductible had it been directly so bequeathed, devised, or given by the decedent, deduction will be limited to that portion, if any, of the property or fund which is exempt from an exercise of such power.

STATEMENT

The decedent, who died July 24, 1936, devised and bequeathed the residue of her estate to the petitioner as trustee to pay the income therefrom to her husband for life or until he should remarry, with the right to invade the principal should illness, accident or misfortune require more than the net income for his proper care and comfort.[1] The decedent's will further provided for the transfer of her country home, known as Rockwood Manor, to the National Girl Scouts to be utilized as a character building center. The conveyance was made subject to the further condition that should the Girl Scouts abandon the property or close the home, or abandon it for the purpose stated, then the property was to pass to the Esther Chapter of the Order of the Eastern Star (R. 1–2).

---

[1] The average net income was slightly more than twice the average expenditures of the husband.

Upon the death or remarriage of decedent's husband, the decedent directed that one-half of her residuary estate be paid over to the Girl Scouts if they be still operating Rockwood Manor, the fund so paid over to be used only in the development and improvement of the home, but if they had abandoned the property or were not using it for the purpose stated, then such one-half of the residuary estate was to be paid over to the Eastern Star. The remaining one-half of the residuary estate was to be held in trust for 20 years after the death of the husband, to be then paid over to the Girl Scouts or to the Eastern Star, whichever one was then in possession of Rockwood Manor. It was stipulated that the Girl Scouts was organized and operated for one or more of the purposes enumerated in Section 303 (a) (3) of the Revenue Act of 1926, but that the Eastern Star was not such an organization (R. 2–4). The Commisisoner allowed a deduction on account of the gift of Rockwood Manor, but denied the deduction sought with respect to the residue.

The Board (with three dissents) held that the estate was entitled to a deduction on account of the bequest of the residuary estate to the Girl Scouts (R. 5–13) but the court below reversed (R. 27).

ARGUMENT

The only reason advanced for the allowance of the writ is an asserted conflict in principle with

Ithaca Trust Co. v. *United States,* 279 U. S. 151. There, the testator made a charitable bequest of the residue of his estate subject to a life estate in his wife with authority to invade the corpus to the extent "that may be necessary to suitably maintain her in as much comfort as she now enjoys." The Court held that the language of the will placed a limit upon the possible invasion of the corpus and that the limit was capable of being measured so that the amount of the charitable gift could therefore be computed with reasonable certainty.

In this case, on the other hand, the gift of the residue to the National Girl Scouts was not only subject to diminution by diversion for the life tenant's benefit under a more loosely drawn limitation, but the gift itself was contingent upon the continued operation of Rockwood Manor for the prescribed purposes. And since the decedent had not supplied the funds for the maintenance of the Rockwood Manor project, it was wholly conjectural whether the property would be so used at the critical times. The circumstances of this case thus distinguish it from the *Ithaca Trust Co.* case, and other circuit courts of appeals have denied deductions in situations comparable to that presented here. See *United States* v. *Fourth Nat. Bank in Wichita, Kan.,* 83 F. (2d) 85 (C. C. A. 10th), certiorari denied, 299 U. S. 575; *St. Louis Union Trust Co.* v. *Burnet,* 59 F. (2d) 922 (C. C. A. 8th). See also *Gammons* v. *Hassett,* 121

F. (2d) 229 (C. C. A. 1st), certiorari denied, 314 U. S. 673.

CONCLUSION

The court below correctly applied principles enunciated by this Court. There is no conflict of decisions. The petition should be denied.

Respectfully submitted.

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U. S. GOVERNMENT PRINTING OFFICE: 1942